



**EDMUND G. BROWN JR.**  
Attorney General

*State of California*  
**DEPARTMENT OF JUSTICE**

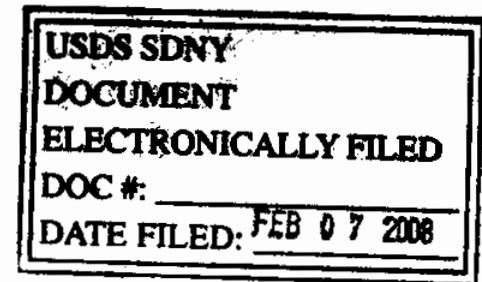
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February 5, 2008

The Honorable Paul A. Crotty  
United States District Court Judge  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 735  
New York, NY 10007



RE: *State of New York, et al. v. U.S. Dept. of Health and Human Services*  
SDNY, Case No. 07-CV-8621

Dear Judge Crotty:

The State of California requests the Court's permission to file an amicus brief in the above-entitled matter. Plaintiff New York and defendant have both consented to California's participation as a friend of the Court in this case. Defendant requested that all amici file a joint brief. However, California respectfully requests the Court's permission to file an individual amicus brief.

The underlying action concerns the four plaintiff states' challenge to the defendant's new requirements for participation in the State Children's Health Insurance Program (SCHIP). California has a significant interest in the pending litigation because California participates in SCHIP as the largest recipient of SCHIP federal funds. California enrolls the largest number of SCHIP children – nearly 835,000 children under age 19, which is more than the combined total for the country's second and third largest programs in New York and Texas. Although California's SCHIP Program generally covers children up to 250 percent of the federal poverty level, in a number of instances, California enrolls children whose household income is above 250 percent. Defendant's proposed new directive, and its interpretation of the 250 percent federal poverty level calculation, could disqualify a substantial number of children currently participating in California's SCHIP Program. As such, California can inform this Court on the potential consequences that may result from the defendant's new requirements.

California intends to address both the threshold procedural issue of whether defendant's August 17, 2007 letter constituted substantive rule making that must meet the requirements of the administrative procedure act, and the substantive legal issue of whether defendant has the authority to impose the new requirements, even through a valid rule-making process.

**MEMO ENDORSED**

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California has a substantial interest in the Court's determination of defendant's new requirements because it will define and/or constrain the states' ability to provide health care coverage to low-income children under the program. Thus, California respectfully requests that the Court grant it permission to file an amicus brief in the above-entitled action.

Sincerely,



JENNIFER M. KIM  
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

cc: John Schwartz  
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*Permission is granted and the  
submission is limited to 20 pages*

**SO ORDERED:**



HON. PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE